setts and Oklahoma — and containing also exhibits of trust agreements actually in use in Massachusetts and elsewhere as well as forms of general provisions for such declarations of trust.

A complete table of cases cited and a fairly adequate index complete the volume.

The author is obviously a believer in this form of business organization, although he denies any intention either to recommend or to discourage the adoption of the trust estate form by any individual enterprise. His belief, however, in the efficiency of courts of equity to right most legal wrongs which arise in the conduct of business as compared with statutes to remedy grievances arising in the creation and conduct of corporations is plainly apparent, and he cites "the struggle by courts to bring corporate assets to the status of a trust fund" as one of the "finest tributes to an excellence in justice of the theory herein expounded that one might hope to find."

The book will presumably be not less cordially approved by the profession because it deprecates the avoidance of attorneys' fees or cheapness in organizations, and emphasizes that no one but a competent legal adviser, skilled in the laws of his state, can be relied upon to determine that a trust should be created, to draft the trust instrument properly, and to advise and instruct the trustees in the safe management of the trust estate.

J. COLBY BASSETT.

LE GOUVERNEMENT DES JUGES ET LA LUTTE CONTRE LA LÉGISLATION SOCIALE AUX ÉTATS-UNIS. L'expérience Américaine du contrôle judiciaire de la constitutionnalité des lois. By Édouard Lambert. Paris: Marcel Giard & Co. 1921. pp. 276.

Professor Lambert of the University of Lyon presents under the above title a discriminating analysis of certain phases of judicial review of legislation in the federal and state governments of the United States. Recent judgments of the French courts, it is observed, are comparable with some of the landmarks establishing and developing judicial review in the United States,[1] and during the war it was not unusual in France for judicial interpretation and executive orders to disregard the legislative intent. These tendencies have culminated in a campaign in favor of the abrogation of articles 11 and 12 of the Law of August 5, 1790, title II, and the provision of the Constitution of September 3, 1791, title III, ch. 5, art. 3, to the effect that the courts ought not to interfere in the exercise of legislative power and are not privileged to suspend the execution of the laws. This campaign has resulted in the favorable consideration of a proposal introduced for a number of years in the French Chamber of Deputies to amend the present French constitution to establish judicial control over legislation along lines similar to the American system. The party supporting this proposal is now in the majority, and it seems to be, according to Mr. Lambert, only a matter of time when, either by amendment to the constitution or by judicial interpretation based on the former declarations of rights, French courts will adopt a type of judicial review modeled in part after that of the United States. Three phenomena are regarded as pointing in this direction: First, the sentiment prevalent among ministers to revert to the theory that it is the duty of the judiciary to protect the fundamental laws against sudden and radical changes; second, the tendency of the French Supreme Court to adopt very liberal methods of interpretation; third, the aspirations of jurists and of popular

[1] For example, a judgment of a court in the district of the Seine is compared with a similar judgment in the case of Godcharles *v.* Wigeman, 113 Pa. St. 431.

opinion toward a restoration of judicial control over the constitutionality of laws. These phenomena are referred to as the most striking characteristics of French politics.

Interest in the American theories and practices in relation to judicial review, it is noted, is not new in France. Among those who have defended the American system are Professors Beauregard,[2] Moreau,[3] Hauriou,[4] Jeze,[5] and numerous other scholars and publicists including the noted parliamentarian Charles Benoist.[6] In fact, interest in the problem of judicial control in France has been especially noteworthy during the last two decades, as is evidenced by frequent articles and such monographs as those of Albert Angleys[7] and Henry Desfougères.[8]

With a brief introduction on the French situation Professor Lambert proceeds to examine the theories and practices of judicial review in the United States with the purpose of furnishing a background for the public discussion which is sure to ensue in an effort to adopt a similar system in France. The basis of the American doctrine is attributed to the theory of the separation of powers introduced as a leading principle of American federal and state constitutions. It is observed, however, that a different type of separation is accomplished in England and in France, where the principle works against the judges and to the advantage of the legislature and there is established what is known as *legislative supremacy*, whereas in the United States the principle works to the advantage of the judges and there is established "*a regime of government by the judges.*"

Instead of repeating the traditional American views as to the separation of powers, judicial independence, and the necessity of judicial review, Mr. Lambert deals with the underlying principles and practices of judicial reveiw of the constitutionality of laws and judicial construction of statutes whereby there has been established in the United States what is termed "the political supremacy of the judiciary." This political supremacy, it is found, renders the process of law-making in the United States very different from that prevailing in France and other European countries, owing to the fact that the statutes of the state and federal governments are frequently merely the realization of popular desires which cannot be rendered effective until affirmatively approved by the courts.

American judges, then, are regarded as the ultimate authorities to interpret the laws. Judicial supremacy in the United States is, Mr. Lambert thinks, due to three facts: First, the control over the constitutionality of laws under the general doctrine of judicial review; second, interpretation of statutes under the prevailing theories of the common law and the case system; third, the methods of legal study. Considerable emphasis is given to the American system of legal study in order to show that legal instruction in the United States, built upon the case method, tends to uphold common-law doctrines, and to depreciate the interest in and importance of statutes, with the result that the American judges and lawyers, contrary to the practice of the French jurists, are disposed to construe statutes strictly and to hold them invalid on minor pretexts in order to preserve the traditions of the common law which have been the groundwork of their legal education.

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[2] *Monde Économique* of November 17, 1895.

[3] *Le Règlement Administratif*, 261.

[4] Note, *Conseil d'État*, August 7, 1909, Sirey, 1909, III, 145.

[5] *Revue Générale d'Administration*, 1895, II, 241, and *L'Inconstitutionnalité des Lois en Roumanie*, 29 *Revue du Droit Public*, 140 (1912).

[6] *Chambre: Documents Parlementaires*, sess. ord. 1903, 99.

[7] *Des Garanties Contre l'Arbitraire du Pouvoir Législatif, par l'Intervention du Pouvoir Judiciaire*, Chambery, 1910.

[8] *Le Contrôle Judiciaire de la Constitutionnalité des Lois*, Paris, 1913.

The basis for what is regarded as modern judicial review in the United States is attributed to two provisions of the Constitution: First, that preventing the states from impairing the obligation of contracts; second, the due process clause of the Fourteenth Amendment. Through these provisions, which remained in a large measure inert during the period before 1880, there was evolved by judicial interpretation, says Professor Lambert, a new *Magna Charta* "to protect the energies of individuals and corporations against the arbitrary manifestations of popular sovereignty." It is recognized, however, that a mild form of review involving the determination of issues between federal and state governments and infractions against the Constitution beyond a reasonable doubt was in effect earlier. This moderate theory of judicial review is that which is found in the works of constitutional authorities such as Cooley and Thayer. It was in the light of these moderate statements that such French authors as Jalabert,[9] Saleilles,[10] and Thaller[11] were led to admire the American system.

In the new interpretation *due process* is what the Supreme Court declares *such* and thereby the court has become a censor of all state legislation. As a consequence the Supreme Court at the opening of the twentieth century is held to be in possession of two instruments to arrest political and economic progress in the United States; first, the rule of reason, and, second, the rule of expediency. The chief purpose of these instruments, as the author sees it, is to hold legislation in the traditional mold of the common law and to support the individualistic conceptions of the eighteenth century. Only such changes are permitted by legislative experiment as appear to the judges "legitimate and instituted with enough prudence and reflection."

A painstaking study of American books, articles, and court decisions relating to judicial review in federal and state governments, has led Professor Lambert to conclude that the moderate views of Cooley and Thayer have long ago been discarded in practice and that there is a marked tendency for courts to substitute their social and economic politics for that of the legislature in reference to labor legislation, concerning which numerous acts were held void because regarded as economically undesirable. So much is this true that labor leaders have come to feel that it is not constitutions that stand in the way of progressive labor legislation in the United States but reactionary judges who seek to hold legislation in accord with their own political and economic views.

The author considers various palliatives to judicial control, among which are: First, advisory opinions; second, declaratory judgments; third, administrative determination of legal relationships. These palliatives, it is held, although affecting American law to some extent, have frequently been checked, interfered with, and often destroyed by the judiciary, jealous of its own rights and prerogatives.

As to whether the American doctrine of "government by judges" should be adopted in other countries Professor Lambert believes that if they desire "a robust corset of iron" to defend the existing social and moral order against the permeation of reforms and revolutionary tendencies they could do no better than to adopt judicial review. To quote the author, "the judicial control of the constitutionality of laws with its two complements, the construction of laws in the American manner and government by injunctions, is without doubt the most perfect instrument of social statics to which one could actually have recourse to curb the agitation of labor leaders and to hold the legislature in check from going too rapidly in the direction of economic radicalism."[12]

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[9] *Bulletin de la Société de Lég. Comp.*, 1902, 253.
[10] *Ibid.*, 240–246. [11] *Ibid.*, 249. [12] p. 224.

According to Mr. Lambert it is not necessary to amend the French Constitution to secure judicial review. The various declarations of rights which have never been repealed furnish, he thinks, ample basis for courts to control French legislation. But judicial review, as he sees it, would have to be adopted gradually in order to fit into a system unaccustomed to the checks which such a practice requires.

The treatise is concluded with a section on the advantages of the study of comparative legislation and jurisprudence which, in the judgment of the author, must include not merely a review of legislation but also of judicial decisions. He thinks the French attitude to confine attention almost exclusively to code and statute law is wrong and offers suggestions for the study of American case law.

The author fails to distinguish between judicial review of state laws, definite provision for which was made in the federal Constitution, and the review of acts of a co-ordinate department of the same government, which was the outgrowth of judicial construction in the states and in the nation. A few errors of fact, such as the discussion of the reform of the federal judicial code so as to secure greater uniformity in the interpretation of the federal due process clause without any mention of the amendment to remedy this defect, have probably resulted from the difficulty in securing material regarding foreign institutions and practices.

The author is to be commended for delving beneath the traditional theories and conventional platitudes which characterize the work of many American and foreign writers who deal with judicial review, and for presenting a succinct summary and critique on the underlying theories as well as some of the obvious results of judicial review of legislation. Dealing as the author does with the effects of judicial review largely in relation to social legislation, certain important phases of the practice are not considered and the significance of the practice of review is somewhat exaggerated in its relation to the general characteristics of American law. It is a type of work, however, which not only will be serviceable to Frenchmen but also will be of interest to judges, lawyers, and teachers of public law in the United States.

CHARLES GROVE HAINES.

THE LAW IN BUSINESS PROBLEMS. By Lincoln Frederick Schaub and Nathan Isaacs. New York: The Macmillan Company. 1921. pp. xxxiv, 821.

The present volume aims in the main "to show the legal system in its relation to the problems and policies of business administration"; to "anatomize" business and to "study the part played by the law in this anatomy." It is intended primarily for use in training students whose chief interest lies in the field of business administration rather than in the field of law. It is divided into five parts: Introductory Topics includes such matters as the nature and sources of the law, and the place of business law in the general scheme of legal classification; Part I, Engaging in Business, relates to the so-called "right" of engaging in business together with the limitations imposed thereon by the law concerning public utilities, unfair trade, licensing statutes, etc.; Part II, the Law of Contracts with Special Reference to the Relation of Buyer and Seller, deals with the rules and principles relating to the formation and interpretation of contracts, parties, etc.; Part III, the Enforcement of Contracts, with Special Reference to the Relation of Debtor and Creditor, gives a general summary of the steps in an action, the various remedies provided by law, and the law of guaranty, suretyship, mortgages, conditional sales, pledges, and negotiable instruments; Part IV, the Law of Business Organization, deals in